UNREPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C).No.809/2006

% Date of Decision : March 09, 2007

SHRI SUNIL KUMAR ..... Petitioner
! Through: Mr.Francis Paul, Advocate

Versus

$ UNION OF INDIA & OTHERS ..... Respondent
^ Through: Mr.Manoj Ohri, Advocate

CORAM:-
*** HON'BLE MR. JUSTICE T.S. THAKUR**
*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1.Whether reporters of Local paper may be allowed to see the judgment?
2.To be referred to the reporter or not?
3.Whether the judgment should be reported in the Digest?

S.N. AGGARWAL, J.

1. Aggrieved by his removal from service, the petitioner has filed this writ petition seeking a writ of mandamus directing the respondents to reinstate him in service. He has also prayed for directions to the respondents to treat and adjust his period of absence

from duty against his outstanding leaves and to reduce the punishment in proportion of gravity of offence instead of termination.

2. Briefly stated the facts of the case are that on 15.5.2001 the petitioner was appointed as CT/GD no.015233807 by the respondents and thereafter he was sent for training to Srinagar, RTC-4. After completion of the training, he was posted with 89 Battalion, CRPF, Srinagar, Anant Nag where he worked for three years. Subsequently, the said 98 Battalion of CRPF was shifted to Delhi at Bawana near Narela and the petitioner was transferred to Delhi along with the said Battalion. After sometimes, 98 Battalion of CRPF got dissolved and the petitioner was then transferred to 2nd Battalion of CRPF on 23.8.2004. From there the petitioner deserted the Unit Lines/Camp on 9.11.2004 at 1300 hrs. without permission of the competent authority and consequently a warrant of arrest was issued to Superintendent of Police, Mohindergarh (Haryana) vide Office letter no.W.II-9/2004-02-EC.II dated 13.11.2004 for his apprehension.

However, the petitioner reported back on duty on his own on 30.11.2004 at 1215 hrs. He again deserted from the Camp on 1.12.2004 at 1000 hrs. without permission of the competent authority and again warrant of arrest was issued to Superintendent of Police, Mohindergarh (Haryana) vide Office letter no.W.II-9/2004-02-EC.II dated 8.12.2004. However, he again reported back on duty on 27.12.2004 at 1700 hrs. and was produced before the Commandant-cum-Chief Judicial Magistrate on 28.12.2004 and released on bail. He again deserted from the Camp on 30.12.2004 at 0450 hrs. without permission/sanction of the competent authority. On receipt of written complaint from OC E/2, warrant of arrest was again issued on 7.11.2005 for his apprehension. The petitioner was neither apprehended nor did he report for duty nor any communication was received from him by the Department. As a result, a departmental enquiry was ordered vide Office Order Memorandum no.P.VIII-2/2005-02-EC.II dated 22.1.2005 and the copy of the same was sent to petitioner's home address provided

to the Department by the petitioner himself. The petitioner even thereafter did not report for duty nor did he send any communication/written reply to the charges as required under Rules on receipt of Memorandum. Shri L R Sharma, Assistant Commandant, was appointed as Enquiry Officer to enquire into the charges framed against him. The Enquiry Officer vide letter no.G.II-1/05.LRS dated 10.2.2005 directed the petitioner to appear before him for conducting the enquiry against him. However, he did not respond to the said notice. The Enquiry Officer vide letter dated 27.2.2005 again directed the petitioner to appear before him in connection with the enquiry but he opted not to appear in the enquiry for reasons best known to him. Under the circumstances, *ex parte* enquiry was conducted by the Enquiry Officer against the petitioner and after completion of the said enquiry, the charges framed again him were found proved. A copy of the enquiry report was sent to the petitioner by the Disciplinary Authority vide letter no.P.VIII-2/2005-02-EC.II dated 5.7.2005 with a

direction to submit reply/representation with defence evidence/supporting documents, if any, within 15 days. The petitioner did not send any reply in his defence to the findings against him in the enquiry report. Consequently, the Disciplinary Authority, i.e. Commandant, 2nd Battalion, CRPF, after going through the departmental proceedings and material evidence agreed with the report of the Enquiry Officer and held the petitioner guilty of charges of unauthorised absence proved against him. The Disciplinary Authority imposed the penalty of "Removal from Service" w.e.f. 22.7.2005 vide Office Order no.P.VIII-2/2005-02-EC.II dated 22.7.2005 under Section 11(1) of CRPF Act, 1949 read with Rule 27(a) of the CRPF Rules, 1955.

3. Aggrieved by the impugned order of 'Removal from Service' issued by the Disciplinary Authority, the petitioner preferred an appeal dated 30.8.2005, which was considered but rejected by the Appellate Authority i.e. DIGP, CRPF, Jammu being devoid of any merit vide letter no.R.XIII2(1)/05-EC-111 dated 12.11.2005.

4. Now aggrieved by the impugned order passed by the Appellate Authority confirming the order dated 22.7.2005 of the Disciplinary Authority, the petitioner has filed this writ petition seeking setting aside of both these orders i.e. the order of the Disciplinary Authority as well as that of the Appellate Authority.

5. In response to the notice of this writ petition, the respondents have filed their counter affidavit. They have also annexed certain judgments along with their counter affidavit. The respondents have raised a preliminary objection regarding the territorial jurisdiction of this Court to entertain the present petition. It is contended that no part of cause of action has arisen within the territory of this Court. As per respondents, the petitioner was awarded penalty of 'Removal from Service' vide order dated 22.7.2005 passed by the Commandant, 2nd Battalion, CRPF at Dubri (Assam). It is further contended that appeal against the order of Disciplinary Authority filed by the petitioner was disposed of by the Appellate Authority i.e. DIGP, CRPF,

Jammu vide order dated 12.11.2005. In substance, the contention of the respondents is that as the termination order was passed against the petitioner by the Disciplinary Authority at Assam and the Appellate Order was passed by the Appellate Authority at Jammu, therefore, this court has no jurisdiction to entertain the present petition. The respondents have further raised a preliminary objection on the maintainability of the present petition on the ground that the petitioner has rushed to this court without exhausting the statutory remedy of revision provided in Rule 29 of the CRPF Rules, 1955. On merits, the stand of the respondents is that the petitioner had deserted the Camp where he was posted w.e.f. 23.8.2004 thrice and three warrants of arrest were issued against him. It is stated that this kind of behaviour/attitude from the members of the Force is not desired and tolerated in the disciplined Force.

6. We have gone through the impugned order dated 12.11.2005 passed by the Appellate Authority at Jammu and we find that the Appellate Authority has given cogent

reasons in its order for confirming the punishment of 'Removal from Service' awarded to the petitioner by the Disciplinary Authority. It is borne out from the record that the petitioner had deserted the Camp where he was posted on three occasions and for that reason warrants of arrest had to be issued for apprehending him. The contention of the petitioner is that on all the three occasions he deserted the Camp, it was on account of his illness. The petitioner has not placed any material on record to show that he had informed the concerned Authorities about his intention to leave the Camp for the purpose of his treatment on any of the three occasions he deserted the Camp as mentioned in the impugned order of the Appellate Authority. We further do not find any infirmity in the procedure adopted by the Enquiry Officer for holding an enquiry against the petitioner for his unauthorised absence. He was given adequate opportunity to put up his defence before the Enquiry Officer but despite that he opted to remain absent from the enquiry proceedings for the reasons best known to him. The

contention of the petitioner is that the respondents should have sent the communication regarding the enquiry at his Delhi address instead of sending the same to his home town because the petitioner at the relevant time was residing with his relative at Delhi. The petitioner has not shown that the respondents were aware about the Delhi address of the petitioner and, therefore, the respondents were justified in sending the communication pertaining to the petitioner regarding his unauthorised absence at the address of his home town available with them. The petitioner has admitted that all the communications sent by the respondents addressed to the petitioner were received by his parents. His contention that as his parents were illiterate, they did not inform him about the enquiry, is of no consequence. We also find from the record that the petitioner has filed this writ petition without exhausting the statutory remedy of revision provided in Rule 29 of the CRPF Rules, 1955. We have not touched upon the question of territorial jurisdiction of this Court as we do not find any merit in

the present writ petition.

7. In view of the above, we find no merit in this writ petition. Dismissed.

S.N. AGGARWAL
(JUDGE)

T.S. THAKUR

(JUDGE)

MARCH 09, 2007
'ss'